

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE MERCEDES-BENZ EMISSIONS
LITIGATION

Civil Action No. 2:16-cv-881 (JLL) (JAD)

Motion Date: February 5, 2018

ELECTRONICALLY FILED

ORAL ARGUMENT REQUESTED

**DEFENDANTS MERCEDES-BENZ USA, LLC'S AND DAIMLER AG'S
NOTICE OF MOTION TO DISMISS AND TO COMPEL ARBITRATION
PURSUANT TO FED. R. CIV. P. 8(a), 9(b), 12(b)(1), AND 12(b)(6)**

PLEASE TAKE NOTICE that, pursuant to Local Rule 7.1, Defendants Mercedes-Benz USA, LLC and Daimler AG (the "Mercedes Defendants") shall move before the Honorable Jose L. Linares, U.S.D.J., on February 5, 2018, at the United States Courthouse, 50 Walnut Street, Newark, New Jersey, for the entry of an Order dismissing with prejudice all claims alleged against them in plaintiffs' Fourth Consolidated and Amended Class Action Complaint ("FAC") (Dkt. No. 107), and directing certain plaintiffs to arbitration.

PLEASE TAKE FURTHER NOTICE that the Mercedes Defendants move to dismiss the FAC pursuant to: (1) Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction; and (2) Rules 8(a), 9(b), and 12(b)(6) for failure to satisfy the requisite pleading standards and to state a claim upon which relief can be granted, and because plaintiffs' claims are preempted. The Mercedes Defendants will also move pursuant to Rule 12 for an order directing plaintiffs Gwendolyn Andary and Darrell Feller to arbitration if the Court determines that it has jurisdiction.

PLEASE TAKE FURTHER NOTICE that in support of this motion, the Mercedes Defendants shall rely upon the accompanying Memorandum of Law and Declaration of

Lawrence Fleming, including the exhibits and appendices attached thereto, any reply papers, and oral argument, if any. A proposed form of Order is also submitted.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Dated: November 9, 2017

Respectfully Submitted,

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